

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 413 OF 2004

Gorai Om Sai Co-operative
Housing Society Ltd. ...Petitioners.

VS.
Jaywant Narayan Bhoir ...Respondents.

Mr.Rahul Rao with Mr. M.J. Shetty, adv for the
petitioner.

Mr.M.U. Pandey, adv for the respondents.

CORAM: S.U. KAMDAR, J.

DATE : 7TH DECEMBER, 2004.

P.C. :

1. The present petition is filed under section 34 of the Arbitration & Conciliation Act, 1996 for setting aside the Award dated 21st April, 2004 passed by the Arbitrator. Some of the material facts of the present case are as under :

2. The petitioner is a society incorporated and registered under the provisions of the Maharashtra Co-operatives Society Act, 1960. The petitioner has

24 members. The petitioner society is the owner of the building and land bearing plot no.-105, RSC-37, Gorai-2, Borivali (West), Mumbai-400 092. The petitioner society invited tenders for construction of a building for 24 flats to be used by the members for residential purposes. On 15.11.98 an agreement was executed between the managing committee of the petitioner society and the respondent contractor. On 1.12.1995 a fresh agreement was arrived by and between the petitioner society and the respondent contractor through the managing committee of the respondent society. Under the terms and conditions of the said agreement, the respondent was required to construct a building within a period of 2 years. However, no progress could take place because the said land was falling under C.R.Z. regulations. There was no permission to carry out construction on the said land. According to the petitioner thus the said agreement expired by efflux of time. On 6th April, 2000, the term of the managing committee expired but since no election had taken place the old managing committee continued to run the affairs of the petitioners society.

3. The estimate cost of the construction of the said building of an area of admeasuring 1726.23

sq.meters was about Rs.65 lakhs. On 7.4.2000 a supplementary agreement was executed by and between the managing committed of the society and the respondent for construction of a building on an enhanced rate of Rs.650/- per square feet. On 30.4.2000 a formal supplementary agreement due to change in the business name of the respondent was arrived at. However, the terms and conditions of the agreement dated 7.4.2000 continued to remain the same. From time to time the running bills were sent by the respondent duly certified by the architect for the payment. ON 5.7.2000 first running bill for Rs.5,96,625/- was sent. On 26.9.2000 the second running bill was sent. On 7.11.2003 third running bill was sent for the sum of Rs.7,81,881/-. It is the case of the petitioners that there were serious disputes among the members of the society and ultimately the management of the committee was superceeded by Co-operative Registrar under the provision of Maharashtra Co-operative Society Act, 1960 and board of administrators was appointed to manage the affairs of the said society.

4. With the change in the management of the society there were differences and disputes by and between the petitioner and the respondent contractor.

Accordingly respondent invoked the arbitration clause and moved arbitration application being application no.9 of 2001 before the Hon'ble the chief justice of this court. On 7.6.2002 the Hon'ble chief justice appointed Justice D.R. Dhanuka (retd) as the sole arbitrator to resolve the differences and disputes between the parties. The arbitrator by his award dated 21.4.2004 has awarded a sum of Rs.1,45,0943/- with interest thereon on Rs.5,85,852/- with further interest at the rate of 12% from the date of award till payment and or realisation. It is this award which is the subject matter of challenge before me in the present arbitration proceedings.

5. The learned counsel for the petitioner has raised two grounds of challenge under section 34. The first contention is that the award is contrary to justice or morality because the claim of the respondent is fraudulent. The second ground is that there is not a valid contract between the petitioner and the respondent and consequently there is no valid arbitration agreement between the parties and therefore the arbitrator had no jurisdiction to entertain the present claim.

6. Both the contentions which are raised by the

learned counsel for the petitioner is based on one single factor namely that there is no approval of the general body of the society for the quantity of work required to be carried out by the respondents for construction of the said building and consequently the consent of the general body of the society is taken by suppressing the relevant material by Committee of the society. It has been urged by the learned counsel for the petitioner that it is well-known that bye-laws of the society empowers the managing committee to spend only to the extent of Rs.25,000/- and for additional expenses the approval of the general body of the society is a must. It is the case of the petitioner that the present agreement is for more than Rs.25,000/- and therefore in absence of the approval of the general body of the society there is no valid contract nor there is any valid arbitration agreement. It is also contended that since the general body of the members was kept in dark in respect of the pile foundation work and quantity thereof, there was no knowledge to the general body member the total amount of expenses it was likely to result in and taking benefit of such ignorance the respondent contractor raised a fraudulent claim in respect of number of pile foundations. It is thus contended on the same fact

that the claim of the contractor is contrary to justice and equality and or morality. And therefore the award passed by the arbitrator is without any merits. The learned counsel for the petitioner has placed heavy reliance on the judgement of the Apex Court in the case reported in *ONGC vs. Saw Pipes Ltd (20003)5 S.C.C.705* and has vehemently contended that in view of the parameters set out in the aforesaid judgment the present award is liable to be set aside on the ground of challenge as raised by him in the present petition.

7. I have considered the aforesaid contentions of the learned counsel for the petitioner and I am not inclined to accept the same. Firstly, there is no dispute that the agreement has been executed by the managing committee of the society in regular course of business with the approval of the General Body of the society. The affairs of the society is governed by the provisions of the Maharashtra Co-operative Societies Act, 1960. The provision of the said act inter-alia provides that it is managing committee who is required to enter into various contracts and or transactions. Undoubtedly, the managing committee is required to obtain necessary approval from the general body of the society. However, essentially

the same is an indoor affairs of the said society. The learned arbitrator has considered this argument at length and has held that third party rights cannot be deleted by the so called arguments that the managing committee of the society had not placed before the general body all the necessary material for approval. It is not disputed before the arbitrator nor it is disputed before me that the approval was obtained by the managing committee by the general body of the society in respect to the same contract and even the rate of Rs.650/- was approved by the general body of the said society. However, the contention raised before me is that the managing committee had not disclosed the material facts i.e. number of pile foundation which was required to be carried out for the construction of the building. In my view of the said argument is neither available to the petitioner nor it is possible for me to accept. Further more on the basis of the aforesaid factor it cannot be held that there is no valid arbitration agreement. It is equally not possible to hold that the claims made by the contractor is contrary to the justice or morality of the case. The challenge to the validity of the arbitration agreement cannot be established on the basis of contentions raised by the learned counsel for the petitioner. In my view the

said contentions of the petitioner are devoid of any and thus the same are required to be rejected. In the light of the aforesaid findings the petition deserved to be dismissed. However, there shall be no order as to costs.

SD/-
